

## REMARKS

In the Office Action dated August 9, 2005, the Examiner reminded Applicants of the proper form of the Abstract, but did not expressly object to the present form thereof. Nonetheless, Applicants have reduced the overall length of the Abstract in order to foreclose any objection thereto and expedite the prosecution of this application.

In addition, the Examiner rejected claims 1-3, 9 and 10 as being anticipated by U.S. Patent No. 6,269,810 to Brooker. The Examiner also rejected claims 4-8 and 24-27 as being obvious over Brooker in view of one of U.S. Patent No. 6,390,091 to Banner, U.S. Patent No. 6,527,011 to Mantz, or U.S. Patent No. 6,581,600 to Bird. Applicants respectfully submit that claims 1, 3-10 and 24-28 should be allowed for the reasons set forth below.

Applicants gratefully acknowledge the Examiner's statement that claims 11-14 would be allowed if rewritten in independent form. In response, Applicants have rewritten claim 11 in independent form.

### Remarks About The Prior Art Rejections:

Applicants have amended claim 1 to recite "a second inhalation conduit communicating with said input end of said chamber housing, wherein said one-way inhalation valve is located in said second inhalation conduit, said second inhalation conduit comprising *an oxygen intake line communicating with said one-way inhalation valve.*" In addition, claim 24 recites "*transmitting oxygen from a gas source* through a holding chamber and an inhalation conduit to the patient during an inhalation sequence of a breathing cycle."

As admitted by the Examiner, Brooker does not disclose "providing oxygen as [a] gas source" (Office Action at 6). Accordingly, the Examiner's rejection of claim 1 over Brooker under 35 USC 102(b) has been overcome and notice to that effect is earnestly solicited.

Contrary to the Examiner's assertion, however, it would not have been

obvious to modify the invention of Brooker by “providing oxygen . . . as taught by Banner, in order to provide the required treatment” (Office Action at 6). Indeed, Brooker repeatedly and expressly teaches *against* any such combination. In particular, Brooker expressly discloses:

It is an *object* of the present invention to provide a pulmonary dosing system for supplying to a patient *capable of normal breathing* a predetermined amount of respirable therapeutically active material (Col. 2, lines 6-9) (emphasis added).

Containment box 7 also has an *ambient air inlet port* and filter in conjunction with a nebulizer and a plenum chamber to provide the inhalation line 4 and mouthpiece 5 with *ambient air* (Col. 4, lines 11-14) (emphasis added).

It will be remembered that the pulmonary dosing system of the present invention *does not include a respirator or the like, and is intended for use with patients who can breath normally* (Col. 4, lines 30-35) (emphasis added).

In sum, because the cited references teach against the proposed combination, the Examiner has failed to make out a *prima facie* case of obviousness and the rejections should be withdrawn (MPEP 2142-2143).

In addition, as shown in FIGS. 2 and 4 of Brooker, ambient air passes directly through inlet 13a through the filter 13 and into the inhalation conduit by way of fitting 17 (Col. 4 lines 25-47). In contrast, the ventilator of Banner includes a closed inhalation conduit 42 that is connected with the ventilator gas port 21 (Banner at FIG. 2, Col. 10, lines 36-65). As such, there is absolutely no suggestion to combine the references. Indeed, any such combination would render both devices inoperative for their intended, express purposes (MPEP 2143.01), and would change the principle of operation of Brooker (MPEP 2143.01). Accordingly, claims 1, 3-10 and 24-31 should be passed to allowance.

On this same note, Applicants further submit that Brooker also fails to disclose, and *teaches against*, (1) “a WYE connector connecting said second inhalation conduit and said exhaust conduit” as recited in claim 28 (*see* Brooker Fig.

2, conduit 27 and conduit 13a, 13, 14, 15), (2) “said second inhalation conduit . . . isolated from and . . . not communicat[ing] with ambient air” as recited in claim 29 (see Brooker Fig. 2, inlet 13a, Col. 4, lines 30-35), (3) “said oxygen intake line and said exhalation conduit . . . connected to a ventilator” as recited in claim 30, and (4) “transmitting said oxygen from a ventilator during said inhalation sequence and further comprising transmitting said substantial portion of said exhaust gas from said exhaust conduit to said ventilator during said exhalation sequence.” Accordingly, claims 28-31 should be passed to allowance for these additional reasons.

### **CONCLUSION:**

If for any reason this application is not considered to be in condition for allowance and an interview would be helpful to resolve any remaining issues, the Examiner is respectfully requested to call the undersigned attorney at (312) 321-4713.

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By:

Respectfully Submitted,  
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